THE RIGHT OF PROPERTY – THOUGHTS, IDEAS AND IMPLICATIONS REGARDING THE OWNERSHIP OF WATER

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Abstract:

Water is by far and without doubts one of the most precious resources. Used for example as drinking water, irrigation water, as coolant for power plants or for recreational means, it is vital to human life and human economic activity. As a natural resource, water is not bound to any political or administrative borders. However, water management has always been one of the primary tasks of nations or regions with various positive as well negative consequences. For instance, a state may allocate water among its citizens but it may at the same time neglect requirements of water governance that may arise due to fact that the water source is part of an international river basin or it may neglect upstream versus downstream user claims. On top of that, ownership and governance of water bodies has changed. From state owned water bodies to quasi-state owned or private companies. At some places, for instance in Germany or France we can observe the reclaiming of water management to become (again) a public service rather than a private service because citizens were either dissatisfied with the way water was managed, water prices have increased or more importantly they wanted to reclaim water as a public good.

This paper therefore has two objectives. First, the paper will trace the history of the right of property by looking into property theories starting from Thomas Hobbes, John Locke, Adam Smith, Pierre-Joseph Proudhon and others. It will then take a closer look at the TEEB study, the Nagoya Protocol and the rationale behind large private landowners such as Douglas Tompkins. The guiding question here is how we got to the ownership principles we have today and what has changed in the course of time or put differently: how do we acquire property and what does that tell us about our understanding of to whom natural resources belong to. The paper will argue that property rights or rather the concept of property rights we find in the aforementioned documents are a purely western and industrialised world concept. This however has strong implications when we look at the way indigenous people look at natural resources such as water for instance. Mostly, the concept of property rights is unknown to them but agreements or documents such as the Nagoya Protocol or the TEEB study presuppose such an understanding of property rights.

Furthermore, this concept can restrain the governance of natural resources such as water. The paper will therefore try in a second step to outline new forms of ownership of water. Hence, we will try to develop new forms of water governance that take into account natural borders and all water users and not just those who managed water historically. Empirically we will look at the case of Lower Saxony, a federal state of Germany. Here, water is mostly owned by public-private actors (water boards), making it difficult for example to implement the European Union's Water Framework Directive because the federal state government as responsible institution relies on public-private owners, which can cause delays and (institutional) friction in the implementation process. There is also less room for innovation in water governance due to the historically grown institutional network.